

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO AGRICULTURE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 235-110.93, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§235-110.93[+] Important agricultural land qualified  
4 agricultural cost tax credit. (a) There shall be allowed to  
5 each taxpayer an important agricultural land qualified  
6 agricultural cost tax credit that may be claimed in taxable  
7 years beginning after the taxable year during which the tax  
8 credit under section 235-110.46 is repealed, exhausted, or  
9 expired. The credit shall be deductible from the taxpayer's net  
10 income tax liability, if any, imposed by this chapter for the  
11 taxable year in which the credit is properly claimed. [The] For  
12 qualified agricultural costs incurred after July 1, 2008, the  
13 tax credit amount shall be determined as follows:

14 (1) In the first year in which the credit is claimed, the  
15 tax credit shall equal the lesser of twenty-five per  
16 cent of [the lesser of the following:

17 ~~(A) The] the aggregate~~ qualified agricultural costs

18 incurred by the taxpayer [~~after July 1, 2008~~]; or



1           ~~[(B)]~~ \$625,000;

2           (2) In the second year in which the credit is claimed, the  
3           tax credit shall equal the lesser of fifteen per cent  
4           of ~~[the lesser of the following:~~

5           ~~(A)~~ The] the aggregate qualified agricultural costs  
6           incurred by the taxpayer ~~[after July 1, 2008]~~; or  
7           ~~[(B)]~~ \$250,000; and

8           (3) In the third year in which the credit is claimed, the  
9           tax credit shall equal the lesser of ten per cent of  
10          ~~[the lesser of the following:~~

11          ~~(A)~~ The] the aggregate qualified agricultural costs  
12          incurred by the taxpayer ~~[after July 1, 2008]~~; or  
13          ~~[(B)]~~ \$125,000.

14 The taxpayer may incur qualified agricultural costs during a  
15 taxable year in anticipation of claiming the credit in future  
16 taxable years during which the credit is available. The  
17 taxpayer may claim the credit in any taxable year after the  
18 taxable year during which the taxpayer incurred the qualified  
19 agricultural costs upon which the credit is claimed. The  
20 taxpayer also may claim the credit in consecutive ~~[or~~  
21 ~~inconsecutive]~~ taxable years until exhausted.



1 (b) No other credit may be claimed under this chapter for  
2 qualified agricultural costs for which a credit is claimed under  
3 this section for the taxable year.

4 ~~[(c) The amount of the qualified agricultural costs~~  
5 ~~eligible to be claimed under this section shall be reduced by~~  
6 ~~the amount of funds received by the taxpayer during the taxable~~  
7 ~~year from the irrigation repair and maintenance special fund~~  
8 ~~under section 167-24.~~

9 ~~(d)]~~ (c) The cost upon which the tax credit is computed  
10 shall be determined at the entity level. In the case of a  
11 partnership, S corporation, estate, trust, or other pass through  
12 entity, distribution and share of the credit shall be determined  
13 ~~[pursuant to section 235-110.7(a).]~~ by rule.

14 If a deduction is taken under section 179 (with respect to  
15 election to expense certain depreciable business assets) of the  
16 Internal Revenue Code, no tax credit shall be allowed for that  
17 portion of the qualified agricultural cost for which a deduction  
18 was taken.

19 The basis of eligible property for depreciation or  
20 accelerated cost recovery system purposes for state income taxes  
21 shall be reduced by the amount of credit allowable and claimed.  
22 No deduction shall be allowed for that portion of otherwise



1 deductible qualified agricultural costs on which a credit is  
2 claimed under this section.

3 ~~[(e)]~~ (d) If the ~~[credit]~~ credits under this section  
4 ~~[exceeds]~~ exceed the taxpayer's net income tax liability for the  
5 taxable year, the excess of the credit over liability shall be  
6 refunded to the taxpayer; provided that no refunds or payments  
7 on account of the credits allowed by this section shall be made  
8 for amounts less than \$1.

9 ~~[All claims for a tax credit under this section, including~~  
10 ~~amended claims, shall be filed on or before the end of the~~  
11 ~~twelfth month following the close of the taxable year for which~~  
12 ~~the credit is claimed. Failure to comply with the foregoing~~  
13 ~~provision shall constitute a waiver of the right to claim the~~  
14 ~~credit.~~

15 ~~[(f)]~~ (e) The director of taxation:

16 (1) Shall prepare any forms that may be necessary to claim  
17 a credit under this section;

18 (2) May require the taxpayer to furnish information to  
19 ascertain the validity of the claim for credit made  
20 under this section; and

21 (3) May adopt rules pursuant to chapter 91 to effectuate  
22 this section.



1            [~~g~~] (f) The department of agriculture shall:

2            (1) Maintain records of the total amount of qualified  
3            agricultural costs for each taxpayer claiming a  
4            credit;

5            (2) Verify the amount of the qualified agricultural costs  
6            claimed;

7            (3) Total all qualified agricultural costs claimed; and

8            (4) Certify the total amount of the tax credit for each  
9            taxable year.

10           Upon each determination, the department of agriculture  
11           shall issue a certificate to the taxpayer verifying the  
12           qualifying agricultural costs and the credit amount certified  
13           for each taxable year. For a taxable year, the department of  
14           agriculture may certify a credit for a taxpayer who could have  
15           claimed the credit in a previous taxable year, but chose not to  
16           because the maximum annual credit amount under subsection [~~h~~]  
17           (g) was reached in that taxable year.

18           The taxpayer shall file the certificate with the taxpayer's  
19           tax return with the department of taxation. Notwithstanding the  
20           department of agriculture's certification authority under this  
21           section, the director of taxation may audit and adjust  
22           certification to conform to the facts.



1           Notwithstanding any other law to the contrary, the  
2 information required by this subsection shall be available for  
3 public inspection and dissemination under chapter 92F.

4           ~~[(h)]~~ (g) If in any taxable year the annual amount of  
5 certified credits reaches \$7,500,000 in the aggregate, the  
6 department of agriculture shall immediately discontinue  
7 certifying credits and notify the department of taxation. In no  
8 instance shall the department of agriculture certify a total  
9 amount of credits exceeding \$7,500,000 per taxable year. To  
10 comply with this restriction, the department of agriculture  
11 shall certify credits on a first come, first served basis.

12           The department of taxation shall not allow the aggregate  
13 amount of credits claimed to exceed that amount per taxable  
14 year.

15           ~~[(i)]~~ (h) The department of agriculture, in consultation  
16 with the department of taxation, shall annually determine the  
17 information necessary to provide a quantitative and qualitative  
18 assessment of the outcomes of the tax credit.

19           Every taxpayer, no later than the last day of the taxable  
20 year following the close of the taxpayer's taxable year in which  
21 the credit is claimed, shall submit a certified written  
22 statement to the department of agriculture. Failure to provide



1 the information shall result in ineligibility and a recapture of  
2 any credit already claimed for that taxable year. The amount of  
3 the recaptured tax credit shall be added to the taxpayer's tax  
4 liability for the taxable year in which the recapture occurs.

5 Notwithstanding any law to the contrary, a statement  
6 submitted under this subsection shall be a public document.

7 ~~[(j)]~~ (i) The department of agriculture, in consultation  
8 with the department of taxation, shall annually submit a report  
9 evaluating the effectiveness of the tax credit. The report  
10 shall include but not be limited to findings and recommendations  
11 to improve the effectiveness of the tax credit to further  
12 encourage the development of agricultural businesses.

13 ~~[(k)]~~ (j) As used in this section:

14 "Agricultural business" means any person with a commercial  
15 agricultural, silvicultural, or aquacultural facility or  
16 operation, including:

- 17 (1) The care and production of livestock and livestock  
18 products, poultry and poultry products, apiary  
19 products, and plant and animal production for nonfood  
20 uses;
- 21 (2) The planting, cultivating, harvesting, and processing  
22 of crops; and



1           (3) The farming or ranching of any plant or animal species  
2           in a controlled salt, brackish, or freshwater  
3           environment;

4 provided that the principal place of the agricultural business  
5 is maintained in the State and more than fifty per cent of the  
6 land the agricultural business owns or leases, excluding land  
7 classified as conservation land, is important agricultural land.

8           "Important agricultural lands" means lands identified and  
9 designated as important agricultural lands pursuant to part III  
10 of chapter 205.

11           "Net income tax liability" means income tax liability  
12 reduced by all other credits allowed under this chapter.

13           "Qualified agricultural costs" means expenditures for:

14           (1) The plans, design, engineering, construction,  
15           renovation, repair, maintenance, and equipment for:

16           (A) Roads or utilities, primarily for agricultural  
17           purposes, where the majority of the lands  
18           serviced by the roads or utilities, excluding  
19           lands classified as conservation lands, are  
20           important agricultural lands;

21           (B) Agricultural processing facilities in the State,  
22           primarily for agricultural purposes, where the





1 majority of the crops or livestock processed,  
2 harvested, treated, washed, handled, or packaged  
3 are from agricultural businesses;

4 (C) Water wells, reservoirs, dams, water storage  
5 facilities, water pipelines, ditches, or  
6 irrigation systems in the State, primarily for  
7 agricultural purposes, providing water for lands,  
8 the majority of which, excluding lands classified  
9 as conservation lands, are important agricultural  
10 lands; and

11 (D) Agricultural housing in the State, exclusively  
12 for agricultural purposes; provided that:

13 (i) The housing units are occupied solely by  
14 farmers or employees for agricultural  
15 businesses and their immediate family  
16 members;

17 (ii) The housing units are owned by the  
18 agricultural business;

19 (iii) The housing units are in the general  
20 vicinity, as determined by the department of  
21 agriculture, of agricultural lands owned or  
22 leased by the agricultural business; and



1                   (iv) The housing units conform to any other  
2                   conditions that may be required by the  
3                   department of agriculture;

4           (2) Feasibility studies, regulatory processing, and legal  
5           and accounting services related to the items under  
6           paragraph (1);

7           (3) Equipment, primarily for agricultural purposes, used  
8           to cultivate, grow, harvest, or process agricultural  
9           products by an agricultural business; and

10          (4) Regulatory processing, studies, and legal and other  
11          consultant services related to obtaining or retaining  
12          sufficient water for agricultural activities and  
13          retaining the right to farm on lands identified as  
14          important agricultural lands.

15          ~~[(1)]~~ (k) The department of agriculture shall cease  
16          certifying credits pursuant to this section after the fourth  
17          taxable year following the taxable year during which the credits  
18          are first claimed; provided that a taxpayer with accumulated,  
19          but unclaimed, certified credits may continue claiming the  
20          credits in subsequent taxable years until exhausted.

21          ~~[(m)]~~ (l) The department of taxation, in consultation  
22          with the department of agriculture, shall submit to the



1 legislature an annual report, no later than twenty days prior to  
2 the convening of each regular session, beginning with the  
3 regular session of 2010, regarding the quantitative and  
4 qualitative assessment of the impact of the important  
5 agricultural land qualified agricultural cost tax credit."

6 SECTION 2. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act, upon its approval, shall apply to  
9 taxable years beginning after December 31, 2012.

10

INTRODUCED BY: Clarence A. Aschbacher

*George Donatelli*



**Report Title:**

Taxation; Important agricultural land qualified agricultural cost tax credit

**Description:**

Amends the important agricultural land qualified agricultural cost tax credit by (1) clarifying the amount of the credit; (2) repealing the requirement that qualified agricultural costs be reduced by the amount of funds received from the irrigation repair and maintenance special fund; and (3) repealing the filing deadline to claim the credit.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

